



POLICE DEPARTMENT

June 8, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Frank DeMaria
Tax Registry No. 918918
Manhattan Robbery Squad
Disciplinary Case No. 2009-251

The above-named member of the Department appeared before me on April 24, April 25, and May 15, 2012,¹ charged with the following:

1. Said Police Officer Frank DeMaria, while assigned to Transit Bureau District 2 and Manhattan Robbery Squad, on or about and between February 7, 2001 and January 11, 2008, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer did possess and/o [sic] use anabolic steroids and/or human growth hormones (HGH) for purposes outside the normal course of standard medical care.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

The Department was represented by Lisa Bland, Esq., Department Advocate's Office, and Respondent was represented by Stephen Worth, Esq.

Respondent through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

¹ The trial of this case was concluded on April 25, 2012, and decision was reserved on that date. At the Department's request, the matter was re-called on May 15, 2012. On that date, the Court declined to reopen the case to accept a newspaper article regarding one of the doctors who treated Respondent.

DECISION

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Detective Patrick Streffacio and Gary Green.

Detective Patrick Streffacio

Streffacio is a 25-year member of the Department assigned to the Internal Affairs Bureau (IAB) since January 2000. In May 2007, he was given a newspaper article about a raid on Lowen's Pharmacy involving the distribution of steroids. The raid had been conducted by the New York State Department of Health, Bureau of Narcotics Enforcement, which he contacted. His main focus was to see if members of the service were purchasing steroids at Lowen's Pharmacy and to see if they were seeing any of the doctors involved in the investigation. One doctor in particular was identified as the main subject of the investigation; Dr. Person A. Dr. Person B was another doctor in his investigation, but Dr. Person C was not part of the investigation at that time.

During the investigation, Streffacio received the customer list from Lowen's Pharmacy and searched it using a computer program to see if the names of members of the Department came up. He found a prescription for anabolic steroids issued by Person B to Respondent. That was the one and only prescription issued to Respondent. It had been written on April 23, 2007, and filled on April 24, 2007. Streffacio did not know if the

prescription was ever picked up as there were no records of that. Respondent was not a patient of Person A and that prescription was the only thing that linked Respondent to this investigation. The prescription was for a 72-day supply of stanozolol². It was a prescription for 36 50-milligram (mg) tablets. Streffacio did not know if this was a drug that was compounded by Lowen's Pharmacy.

Respondent was not given a drug test because he "wasn't considered a priority at the time during the investigation." Streffacio explained, "The drug itself [s]tanozol[ol], in the tablet format is not as persistent, it doesn't stay in the body as long, so it was just assumed that he would not have failed the test so he was put on a non-priority list." Officers using injectable testosterone or human growth hormones (HGH) were considered priorities and it was not known at that time that Respondent had used injectables or been given HGH.

Respondent was the subject of an official Department interview on January 15, 2008 [Department's Exhibits (DX) 5A and 5B are the tape and transcript of that interview]. During the interview, Respondent indicated that he had seen a Dr. Person D and Person B. He also indicated that he had been injected at the doctor's office with testosterone.

Streffacio testified that Respondent said in the interview that he had a primary care physician named "Person E,"³ who "[h]e indicated it was his doctor since -- his

² Transcribed as "Stanozol."

³ Respondent later testified (accurately) that this physician's name was "Person E" In the transcript of Respondent's official Department interview, it was spelled "'Person E."

family doctor since he was young. So it was a town doctor where he lived, so it was a long time.”⁴

Regarding how Respondent said he had been referred to Person D, Streffacio testified, “He said at first his father made the recommendation, but then again afterwards he said it was his father-in-law that recommended him.”⁵ Respondent said he left Person D and started seeing Person B because Person D moved his office around and did not always make his appointments. Respondent said he was referred to Person B by a patient in Person D’s office. Upon Person B’s death, Respondent started seeing Person C. He found out about Person C when he called Person B’s office and someone told him that Person B’s patients were going there.

Streffacio gave testimony about what he claim that Respondent had said about Person C. Streffacio testified, “At first, he indicated he was a sports doctor. He gave me the business card. The business card just basically stated he was a general doctor practitioner, an internist.”⁶ Respondent, he said, claimed to be see Person C for several conditions, including [REDACTED]⁷

⁴ At this point there was an objection by counsel who complained that that was not what was said and that Respondent had said was that he had known Person E for 20 years not that he was his physician of that period of time. A review of the transcript (DX 5B page 10) indicates that Respondent did not state how long Person E had been his primary care physician. He said that he had known him in town for 20 years and that he had had another primary care physician before Person E.

⁵ This appears to be incorrect. A review of the transcript of Respondent’s official Department interview (DX 5B) indicates that Respondent repeatedly said that his father had made the referral to Person D (pp. 24 and 56). There are references in the transcript to Respondent’s father-in-law. Respondent indicated that his father-in-law was a retired physician and he agreed with the questioner who asserted that he did not discuss his sexual problems with his father-in-law because he was embarrassed (pp. 60 – 62).

⁶ At no point in the official Department interview did Respondent say that he saw any doctor because he was a “sports doctor.”

⁷ An objection was made by Respondent’s counsel about the accuracy of this testimony. Reviewing the transcript, Respondent stated that he believed Person C was a hormone replacement doctor and the only specific statement Respondent seemed to have made about treatment by Person C was that Person B had been treating him for back pain (and that Person C picked up after Person B’s death).

Streffacio stated that Respondent had been asked if he had seen a [REDACTED] specialist and that Respondent had not.

On cross-examination, Streffacio agreed that he did not know if Respondent picked up the prescription for stanozolol from Lowen's Pharmacy. He also agreed that he had reviewed the records from the A&P Pharmacy⁸ and that there had been no prescription for stanzolol. Streffacio acknowledged that he had never interviewed Person D or Person C.

On re-direct examination, Streffacio agreed that Person B's medical records had been unavailable and that the prescription records and lab report had been provided by Respondent. On re-cross examination, Straffacio said that he did not know if Respondent had signed HIPAA releases for all of those doctors.

On questioning by the Court, Streffacio indicated that Person B was involved with one other case he had and that he would have investigated Person B in any event because of his connection with Lowen's Pharmacy.

Streffacio indicated that many of the officers involved in his investigation had been patients of Person A and that Respondent had not been a patient of Person A. He agreed that a number of his cases involved officers who attended the Dolphin Gym and that Respondent had not been a member of the Dolphin Gym. There was no indication that Respondent was a bodybuilder and there was no evidence that Respondent spent a great deal of time at the gym.

Gary Green

⁸ The Court took judicial notice that this pharmacy is located in an A&P Food Store located in Bayonne, New Jersey.

Green is an internist and clinical professor at the UCLA School of Medicine and has been employed there for 22 years. He practices medicine at the Pacific Palisades Medical Group in California. On consent, Green was deemed an expert in the fields of anabolic steroids, performance enhancing drugs and internal medicine (DX 1, Green's curriculum vitae).

Green testified that testosterone is a male hormone produced by the testicles. It is responsible for both anabolic and androgenic characteristics. Androgenic characteristics, he explained, are the expression of male secondary sex characteristics such as chest hair. He said that laboratories have ranges of normal for testosterone which can vary but, in general, are from 200 to 1,000 nanograms per milliliter.

Green said that an anabolic steroid is testosterone or a testosterone-like drug that has both anabolic and androgenic components. They are synthetic versions of testosterone that are altered slightly in order to produce certain effects. He said anabolic means something that builds up at the body surface, something like muscle-building. An anabolic effect would be something that contributes to the development of lean body mass or muscle.

These drugs also have androgenic capabilities. Synthetic testosterone starts with a "sort of testosterone backbone and then they add different side chains to give it different properties." Some can be taken orally and some need to be taken by injection depending on the side chain and depending on how they are absorbed.

Green said that testosterone deficiency in a man means that he is not making enough testosterone to be considered within the normal range. It is usually diagnosed through a blood test. He noted, however, that testosterone levels vary throughout the day

and the blood test needs to be done at the right time, generally the morning, when testosterone tends to be the highest.

Green stated that he treats men for testosterone deficiency. He said the cause would depend on age. Testosterone deficiency, generally, could be because the testicles are not functioning or because of a pituitary failure as the pituitary gland sends signals to the testicles to produce testosterone. Medication like anabolic steroids can cause testosterone deficiency.

Green said when he diagnoses testosterone deficiency, he does a complete evaluation. Once he finds the cause, he sometimes treats it. He gave an example, stating that if a person was taking anabolic steroids, it would be stopped. Where there is a deficiency, he would provide a therapeutic dose which would just replace the amount the person is not making. He distinguished that from a situation where someone is taking massive doses of testosterone or anabolic steroids that go beyond a normal physiologic dose. He said he considers this a supra-physiologic or something taken for non-therapeutic reasons.

With regard to how testosterone is administered, Green explained that it cannot be given orally and there is no pill. He said that there are a few formulations permitted in the United States: There is a gel (in 1% and 1.6% strengths) which you can rub on your skin, there are patches that can be put onto the skin, there is a "buccal" that goes under the gum and stays there for 12 hours, and there is a spray.

He said there are also injections that "you can give" every two weeks. A normal injectable dose would be about 200 to 400 mg. Green said that he treats ED and that he would never do so with a synthetic anabolic steroid, as it would not be effective. He

noted that, in many cases when men take high doses of anabolic steroids, it shuts down the normal production of testosterone, causing ED. Anabolic steroids are not indicated for the treatment of ED, he said.

Taking excessive amounts of testosterone or synthetic anabolic steroids can cause enlargement of the prostate, prostate cancer, as well as psychological effects. "There have been descriptions of what's called steroid rage." Other psychological effects, he said, could be depression, suicidality and even psychosis. Injectables can have effects on the heart and can lower HDL or "good" cholesterol, in addition to complications at the injection site. They can also increase blood pressure.

He said that HGH is something produced by the body. Its production is obvious when a person goes through major growth spurts but it is also present as people get older. It is detectable as the result of recent drug tests. There are legitimate reasons for using HGH, such as for a child with a deficiency, some rare wasting conditions associated with AIDS, and some kidney disease in children, "and four or five relatively rare conditions."

Green testified that "unfortunately a lot of these anti-aging clinics and longevity clinics that have sprung up [] have started to treat people with presumed adult growth hormone deficiency." He said that most of these places do not conduct proper evaluations.

Green went on to say that it is difficult to diagnose adult growth hormone deficiency. He said that one way that has been tried is by measuring IGF-1 (insulin-like growth factor 1) levels. IGF-1 is something produced in the body in response to HGH. He said this test is not really adequate. What is recommended by the endocrinology society is some sort of growth hormone tolerance test. "Usually what they do is an

insulin challenge where you give the patient insulin to drive their blood sugar down and then you measure the response for growth hormone."

He said there is also an argentine test used with a growth hormone releasing factor that is available. He said that, generally, HGH deficiency is lifelong and is not a condition that comes and goes. Outside of what he described, Green said, there are no other legitimate uses of HGH. He pointed out HGH is not a scheduled drug (i.e., not a controlled substance), but it is one of the few drugs that cannot be prescribed off-label. HGH is a protein and cannot be taken orally. It must be injected into fatty tissue such as the belly or thigh.

In connection with Respondent's case, Green reviewed the transcript of his official Department interview, a few blood tests that were taken in 2007 and the prescription records from a pharmacy. (During a *voir dire* of a report he prepared, it appears that he also reviewed medical records from Dr. Person F).⁹

Green testified that the initial complaint that Respondent sought treatment for was [REDACTED] In response to questioning, he also noted that Respondent complained about trauma to the groin which occurred several months earlier that had resulted in the [REDACTED] He said that, in his experience, someone with testicular trauma would not wait several months to get treatment as it is painful and he would see a doctor right away. A normal course of treatment for testicular trauma would be to take a history, examine the area then send the person for an ultrasound.

⁹ There were two copies of the five page written report. The first had acknowledged errors (DX 2 for identification). The second, which had been provided to replace the first, and which also appeared to have errors (DX 3 for identification), were not received in evidence.

Green testified that he had come to the conclusion that Respondent had not been "treated for a legitimate medical condition and that this was likely the use of supra-physiologic dosing of testosterone and likely anabolic steroids."

Green was then asked, "Based on your review, was the treatment [of Respondent] within the normal course of standard medical care?" Green responded, "Again, we have some limitations here since we don't have the full medical records prior to 2008, but based on what I reviewed, it does not appear that there were legitimate medical conditions that were being treated at this time."

Regarding Respondent's A&P Pharmacy prescription list from 2001 to 2007 (DX 4), Green said that even though there is not a full record, "we can get a lot." He said there were approximately 29 different medications prescribed over this period involving about eight physicians. He said it started out with AndroGel at 1% and then it took a different course. There are prescriptions for acne which can be a side effect of testosterone use. An August 10, 2001, prescription for Femara 2.5 mg prescribed by Person D immediately jumped out at him because Femera is a drug that is used only in women mainly for advanced breast cancer treatment. It is an aromatase inhibitor and it inhibits the conversion of androgens, like testosterone, to estrogen. He said that when men take high doses of steroids, the body is overwhelmed and starts converting it to estrogen. When the estrogen levels become high, men start to develop breasts and have other adverse effects.

He said his experience with the anti-aging clinics is that they use drugs like Femara to prevent those side effects. He described this as "a red flag." He said that if

Respondent were just taking AndroGel, he would not need Femara. Green agreed that nothing would jump out as inappropriate if a person were just taking AndroGel.

Green noted that there was another prescription for Femara in 2004, as well as a prescription for [REDACTED] a drug used to treat high cholesterol and is another indicator of steroid use.

In 2005, Respondent had a prescription for insulin syringes. Green did not see any medication to go with the syringes, which he said was another red flag. He could not imagine the basis for this occurring.

In May 2005, Respondent was prescribed Novarel, a human chorionic gonadotropin (hCG), which is used mainly in women as a fertility drug. Green said that in men this would stimulate the testicles to produce testosterone and a normal healthy male would not need that. In men using excessive anabolic steroids, the testicles stop producing testosterone so they take hCG to stimulate functioning. Green also noted a prescription at about that time for AndroGel and said that the two would never be taken together.

[REDACTED]

[REDACTED]

[REDACTED]

In 2005, Person B prescribed Depo-Testosterone instead of AndroGel. Depo-Testosterone is an injectable, oil-based form of testosterone, he said, which only has to be given every two weeks as opposed to the gel which is administered daily. Noting the dates of the prescription, Green concluded that Respondent was taking more than the normal dosage of 200 mg each week and that he was taking about 400 mg.

Green also noted that there was a prescription for Arimidex (anastrozole), an aromatase inhibitor which, he said, is only for women with breast cancer and this, he noted, came after the use of syringes. He said there was no reason a healthy male would receive, Novarel, an hCG, on September 30, 2005, and then 10 days later, Arimidex. Green acknowledged that some males with testosterone deficiency are treated with hCG but then they would not, he said, need with testosterone as well.

He also noted that on May 19, 2006, a prescription for Saizen, a form of HGH. Green said the prescription record, taken as a whole, indicated to him that Respondent was using high doses of anabolic steroids, "and lacking anything else to contradict that, that would be my conclusion."

Green had reviewed the record of Respondent's treatment by Person F and termed his evaluation "excellent." Green said that Person F did a thorough history and outlined what Respondent was taking. Person F did a complete physical examination and found that Respondent's testicles were within normal limits and that there had been no trauma. Person F, at one point, took Respondent off all of his medications and found that his testosterone level was low when he was off all medication. Respondent's IGF-1 levels were checked and found to be within normal limits. Green said Person F's medication plan was different than the previous ones. The only thing Person F prescribed was a replacement dose of AndroGel. He prescribed no other medications for Respondent. He said Respondent's HDL or "good cholesterol" went up, which supports his contention regarding Respondent's use of anabolic steroids.

Green noted that Respondent requires replacement testosterone. He stated that it appears that Respondent's body is not producing an adequate amount of testosterone and

requires replacement. When asked why this condition exists, Green testified, “[A]bsent any other medical records to the contrary, my conclusion is that this is based on chronic suppression of his testosterone by chronic use and high dose of testosterone and anabolic steroids.”

On cross-examination, Green agreed that he was testifying for a fee of approximately \$300 per hour to review records and \$400 an hour for testimony. He is board certified in internal, primary care and sports medicine. He is not a board certified endocrinologist. He agreed that an endocrinologist would be appropriate to treat Respondent but that a primary care doctor could also deal with low testosterone. When asked if there were doctors who use anabolic steroids more aggressively, Green responded that there are some who use it illegally. He said for such treatment to be legal, it would involve testosterone rather than synthetic anabolic steroids. He agreed that some doctors see a greater benefit in the use of steroids than others. He said that he was not asked to look into the backgrounds of any of the doctors listed as treating Respondent. He had no knowledge regarding the certification or licensing of any of Respondent’s treating doctors. He agreed that the number of prescriptions issued by Person B and the other doctors would indicate that they were licensed.

Green agreed that a man in his 30s experiencing low sex drive might go to a doctor to discuss it. Further, if such a person came to him, that person would be relying on his expertise to help him with that medical condition. He agreed that this is a complex subject. The prescriptions at issue are Schedule 2 and 3 controlled substances. Green agreed that hypogonadism means a lack of functioning in the testicles and that it is a recognized medical condition and treatment with testosterone might be appropriate.

Green agreed that he did not have the original medical records and no record of how Respondent's testes looked at the time. When asked if he knew if there had been trauma eight or ten years ago, Green stated that Person F's examination records exists and it would be unusual for testicles that had been shrunken by trauma to spontaneously recover to normal size. He said a traumatized organ would not recover under any circumstances. Green agreed that blunt force trauma might cause swelling which could go away over time. He said that if there was trauma sufficient to cause lack of functioning, that would be major trauma, which would have caused Respondent to immediately seek treatment rather than wait several months.

Green agreed that a layman might not know what he said about the relationship between testicular trauma and sexual dysfunction. Furthermore, a layman going to a doctor because he lacks sexual desire might not be surprised by a treatment that involved AndroGel. He agreed that the general knowledge is that there is a link between testosterone and sexual functioning.

Green denied that he said that he would never prescribe testosterone for ED and said that it would depend on the cause.¹⁰ He said that he might do so if someone had documented low testosterone and had other symptoms. Green agreed that, in this case, he did not have the medical records and the original readings.

Green said that it would be unusual for a 30-year-old man to have low testosterone. It happens, but only rarely. He agreed that a layman would not find it unusual to be prescribed testosterone if he had sexual problems.

Green agreed that he believes Person F is doing a good job and is very thorough. He knows that Person F is giving Respondent testosterone and that Respondent will

¹⁰ Green testified on direct examination that he would never treat ED with a synthetic anabolic steroid.

probably need that for the rest of his life. He did not agree that AndroGel is the best way to deliver testosterone and noted that there are other methods. He said a doctor should determine which method “fits best for the patient.”

Green agreed that a licensed doctor prescribed Femara for Respondent. He agreed that a layman would not know what Femara is or what it does. As to whether a layperson would know about other medication, Green stated that in his practice his patients go to the internet and research every drug right up to and including baby aspirin. He believed patients ask more questions about injectable medications. Green stated, “Well, a patient should know if they are getting injectable medication, they would know what they’re taking. I don’t think any patient, let alone a police officer, would not ask a question about being asked to give an injectable medication.”

Regarding an amended prescription list [Respondent’s Exhibit (RX) A] that, unlike the earlier list (DX 4), contained a prescription for Novarel, Green agreed that he had said, after examining the first list that there was a “red flag” when he noticed that there were prescriptions for syringes but no medication to go with them. Green agreed that Novarel is injectable and that might explain the syringes. However, Green reiterated that Novarel is hCG, the female fertility drug.

Green agreed that the only medical records he reviewed were those of Person F. He stated that one would not expect side effects from Person F’s treatment as long as the testosterone levels were monitored. Green was not aware, and did not have any facts, that Respondent was taking anabolic steroids other than those prescribed in the prescription lists.

On re-direct examination, Green stated that there were things in the prescription record that led him to believe that Respondent was taking anabolic steroids that were not in the prescription record. He said that these were the use of prescriptions to counteract the adverse effect of anabolic steroids, such as, Femara, Arimidex and hCG. He indicated that there are many investigations of doctors illegally prescribing anabolic steroids.

On re-cross examination, Green agreed that, given those prescriptions, "a doctor should absolutely know that there is something else going on." He agreed that leads to the conclusion that the doctor himself was administering the testosterone and, therefore, had no problem giving these counteracting drugs.

On questioning by the Court, Green agreed that he had appeared as an expert witness in another case where the officer was using a 10% cream, which was extraordinarily high. That cream had been made in a compounding pharmacy. He agreed that 1% AndroGel is a regular prescription, which is also now available in a 1.6% solution. AndroGel is available in a regular pharmacy.

Green agreed that there was nothing like the 10% solution in this case and noted, "[T]hat was sort of the puzzling thing on this because you had low dose, normal replacement doses, yet you're having these prescriptions for the Femara, the Arimidex and the other things that didn't seem to make sense."

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent has been with the Department for 15 years. He has been assigned to his current command, the Manhattan Robbery Squad, since 2006. He believed he has made about 400 arrests, including 120 for felonies.¹¹

In about 1999 or 2000, he went to see Person D. He said at around that time in his life, he was experiencing no sexual desire. He could not keep an erection and was tired and fatigued. He had asked his father if he had experienced similar sexual issues and his father did not recall any. His father then did research and found Person D.

He said that when he first met Person D he filled out an eight- to ten-page questionnaire that contained questions about his medical history and his family's medical history. One of the questions regarded prior injuries. He had recalled that he had been kneed to the groin when making an arrest, months before, and he listed that. He said that he was not in agony at the time and the only reason he mentioned it was because of the questionnaire. It came up again at the oral consultation with Person D. He said that consultation lasted at least an hour.

After the oral consultation, Person D did a physical examination, an EKG and other tests, including an examination of his testicles. After the examination, Person D told Respondent that the groin injury may have been the reason for the problem. He said he needed blood work to determine this.

When Respondent returned to Person D's office to obtain the results, Person D told him that he had the testosterone of a 70-year-old man and that he was a candidate for testosterone replacement. Person D discussed the pros and cons of taking testosterone

¹¹ As of May 15, 2012, Respondent's career arrest activity summary indicates he has made 346 arrests, including 134 felonies.

and told him to think it over and discuss it with his family and his girlfriend before making a decision.

Among the pros of taking testosterone, Person D told him, was that he would be able to maintain an erection and have sexual relationships with his girlfriend. Among the cons were that he would lose his hair and develop acne, among other things. Person D never told him that he would no longer be able to produce testosterone.

At some point, Respondent agreed to the treatment and Person D prescribed testosterone cypionate along with another medication called "hCG" which he injected in his office. Person D explained to him that the hCG was going to trick the body into producing testosterone. Respondent testified that he had never heard of hCG prior to that but that he possibly heard about testosterone before that.

Respondent went to Person D for several years and he believed Person D injected him with testosterone and hCG every two weeks. When he went to the office they would ask how he was feeling and would review lab results and adjust his medication accordingly.

Respondent said that his medical records with Person D were transferred to Person B and, despite numerous efforts, he was unable to obtain the records. The reason for this was that Person B died and the records were unobtainable. Respondent had signed a release for the Department to obtain these records.

Respondent explained that he obtained a list of prescriptions he had received from the A&P Pharmacy (DX 4) prior to his official Department interview and he provided it to IAB. After the interview, he went back because he believed some things were missing and he obtained an amended list (RX A).

He never took anabolic steroids beyond what was given to him or prescribed by a doctor.

Respondent said he left Person D because he was "inconsistent" in that he kept moving his office and missing appointments. Another patient in the office recommended Person B. He met with Person B initially at Bayonne Hospital. He explained his medical history and had his medical records released to Person B. He said a full medical history was taken, including a weight analysis. Person B took him off all medication and told him to return in two to three months. On his return, Person B sent him for blood work and Respondent noted that he had not done blood work on the initial visit.

When the results of the test came back, Person B told him that he was absolutely a candidate for low testosterone therapy. Person B did not, he said, immediately prescribe testosterone and instead tried to see if his body would work with just hCG and he prescribed Novarel for that purpose.

After taking that for a period of time, Person B ordered more blood tests and, as a result, he prescribed testosterone. Respondent saw Person B for about two years, until Person B died. At one point he called Person B's office and someone there told him that Person B's patients were being referred to Person C.

He said Person C took a history, as the other doctors had done, but continued to prescribe testosterone, explaining that in his history, he had stopped and started repeatedly and he did not want to do that.

Respondent testified that Person C sent him for an EKG and gave him a physical examination. He completed another lengthy questionnaire on his laptop while examining him. Respondent agreed that the prescriptions listed by the A&P Pharmacy and credited

to Person C were prescribed to him by Person C. He also sent Respondent for blood tests to check his testosterone level.

He continued seeing Person C until he was ordered to stop doing so by then-Captain [Daniel] Carione, which happened at the conclusion of his official Department interview. As he understood it, Carione had ordered him to see an endocrinologist, which he did. That was Person F, who has been treating him since 2008.

Respondent testified that all the medications he received were submitted to GHI for payment and all but a few were covered by insurance. Respondent stated that during this period of time he was subjected to Department drug testing numerous times and that he completed questionnaires in connection with those tests. He said he listed all the medications he was taking. He testified that he never attempted to hide any of the medications.

Respondent testified that he never went to Lowen's Pharmacy and never had a prescription filled there. He first became aware of a prescription in his name at Lowen's Pharmacy at his official Department interview. Respondent testified that he never saw Person A and never attempted to go to him. Indeed, Respondent said he had never even heard of him. Respondent also never went to the Dolphin Gym.

Respondent asserted that the first time the Department issued a regulation concerning steroid use was in 2006. He was also aware that the Department changed its regulations regarding steroids. He asserted that he believed he was in compliance with the first regulation and the current regulation.¹² Respondent clarified for the Court that he is still seeing Person F and that he continues to receive prescriptions for AndroGel.

¹² The first memorandum regarding steroid and human growth hormone appears to have been issued on March 26, 2008. Respondent is not charged with violating that or the later memorandum on this subject.

On cross-examination, Respondent indicated that he was married in 2003 and had a child, his only child, in 2006. He works out as much as he can and goes to the gym, "several days a week, maybe 4 or 5 times a week." Respondent was asked if he played football and stated that he used to play football in high school.

Respondent stated that Person E is now his primary care physician. He did not start seeing Person E as a patient until 2002. Prior to Person E, when he needed general medical treatment, he saw Dr. Person G, who worked in an office owned by his father-in-law. He pointed out that his father-in-law is a retired doctor and that he never went to him as a patient. Respondent added that he really did not have a primary care physician as he did not see a doctor regularly. Respondent explained that as a child he had a primary care physician but that as an adult he did not. When asked if he saw Person E as his primary care physician, Respondent stated, "You are labeling him as my primary care doctor. He was a doctor that I would go to in the town of Bayonne." Respondent reiterated that he did not see Person E as a patient before 2002.

Respondent said he saw Person G once or twice. When asked if Person G was a doctor in his father-in-law's practice, Respondent again explained that his father-in-law was retired but that he owned a doctor's office and that Person G rented space there.

Asked yet again about Person E being his primary care physician, Respondent again said that he was not, but agreed that Person E had prescribed [REDACTED] to him. He had also prescribed [REDACTED]

Respondent agreed that he had said that at some point prior to seeing Person D he was kneed in the groin during an arrest. Although it was painful, he never went line-of-

duty sick. He did not observe any swelling at the time, though there had been bruising. He did not see a doctor at that time.

He stated that months later, possibly 8 or 9 months later, he noticed that he had no sexual desire and that when he got an erection he was unable to maintain it. He was somewhere between age 29 and 31 when this occurred. He spoke to his father about this and he did not know how his father had come to recommend Person D. His father was not a doctor. Respondent did not ask any other doctor for a referral.

Respondent believed that Person D told him that he had an expertise in hormone replacement. He did not research the issue of hormone replacement and he did not speak to any other doctor about this. Prior to seeing Person D he did not know that he had a hormone deficiency but that he knew about his symptoms. During Respondent's consultation with Person D, the issue of the injury to his testicles came up. Person D did not do a sonogram of his testicles. Person D did do a blood test and told him that he had hypergonadism and extremely low testosterone. Person D informed him that he was going to give him injectable testosterone and hCG. Respondent denied that Person D told him this was to counteract the effects of testosterone but that Person D had explained that it was to stimulate his own body to produce its own testosterone.

Respondent said he had heard of testosterone at that point but that he really did not know exactly what it was. He was concerned when he was told that he was going to be injected with testosterone. He was working with the Department at that time and he had made Person D aware that he was a police officer. He was not concerned with how an injectable testosterone would effect his ability to function on the job. He was not aware that injectable testosterone was a controlled substance.

When asked if he researched the substance that was going to be injected into his body, Respondent stated, "Dr. Person D explained to me the pros and cons of testosterone treatment. So when you ask me what research I did at that point, I discussed the treatment with my family...My mother, my father and my girlfriend." He agreed that his father and his mother are not physicians.

Respondent stated that Person D injected the testosterone and the hCG in his upper buttocks. Person D also gave him a prescription for AndroGel which he applied to his arms. He did not believe that he was taking all three at the same time.

Respondent indicated that he was now aware that testosterone is a steroid and he believed that Person D probably explained that but he noted that Person D said that testosterone is used to treat his condition of hypogonadism.

Respondent was asked if he was aware that Person D's license had been suspended and Respondent stated that he became aware of that for the first time after his official Department interview.

Respondent acknowledged that Dr. Person H was another doctor in Person D's office and he sometimes saw Person H. He said he stopped seeing Person H because Person D's office was not being run properly and he was uncomfortable. He was told about Person B by a patient in Person D's office. He did not know who the patient was nor did he discuss his medical condition with that person. He pointed out that he was going there because of problems with erections and he did not socialize in the waiting room. The person told him that Person B treated people with hormone deficiency. He did not go through his insurance plan to see which doctors dealt with hormone deficiency.

Respondent made an appointment with Person B and started seeing Person B approximately in late 2004. He said he explained his entire medical history to Person B. One of his problems was infertility and he agreed he did not know if Person B was a fertility specialist. He did not do a sperm analysis. Person B did not recommend that he or his wife see a fertility expert.

Respondent testified that, with Person B, he injected himself with hCG. Prior to that, he had never injected himself with medication. At some point, he received HGH under the name Saizen. He did not recall if part of this was paid by his insurance, but he did pay at least part in cash. He agreed that he paid approximately \$300. He said the use of this drug was discussed with Person B. When he was later prescribed HGH by Person B, Respondent injected it himself, usually in the stomach or leg. He did not recall exactly, but he said this was about three times a week. Respondent stated that when he first received the Saizen he did not know that it was an HGH.

Respondent agreed that he followed sports and "heard in the papers" of an issue with athletes using HGH but that he did not follow it as it did not interest him.

When asked about the testosterone cypionate, Respondent stated that it was given to him a year prior to the HGH. He said the medication was monitored by Person B and it was changed based on Person B's evaluation of how he felt and the results of the lab tests. Respondent stated that he never injected himself with anything while seeing Person D.

Respondent agreed that when Person B died, he was a young man in his 40s. Respondent said he believed that Person B died from a heart ailment, he had had a triple bypass a few years earlier. He was not aware that Person B was using anabolic steroids.

¹³ This was a question posed by the Advocate. There is no evidence in the record to establish that Person B used anabolic steroids.

Respondent said he was referred to Person C by a receptionist or a nurse in Person B's office. Respondent asserted that he made "nonstop" efforts to get his medical records, all of which were unsuccessful. He had believed, when he had spoken to that person on the phone, that his medical records would be forwarded to Person C but they never were. Person C told him that he was seeing some of Person B's patients but Respondent did not know if Person C had actually known Person B personally.

On re-direct examination, Respondent said he wanted to address the questions asked of him about infertility. He stated that prior to his third visit with Person B, his wife got pregnant. He said that was the reason that Person B gave him the injections and did not give him the gel. He noted that, as Green had testified, the transfer of the gel to his pregnant wife would have been extremely dangerous.

On questioning by the Court, Respondent stated that he was never prescribed syringes without accompanying medication.

On re-cross examination, Respondent stated that his daughter was born in April 2006. Respondent agreed that he had been prescribed AndroGel in March 2005, but he did not use that AndroGel.

On further questioning by the Court, Respondent acknowledged that he had been prescribed female hormones but said he did not know that they were female hormones at the time. He had been told they were to counteract side effects of taking the AndroGel.

Respondent testified that he made an appointment with Person F right after his official Department interview and is still seeing him. He has been continually taking AndroGel and has not had any enlarged-breast problem.

FINDINGS AND ANALYSIS

The background of this case was set forth in part in the testimony of Streffacio and in part in the closing argument of the Assistant Department Advocate (Advocate).¹⁴ The Department began an investigation of steroid abuse based on an inspection conducted at Lowen's Pharmacy in Brooklyn by the New York State Department of Health, Bureau of Narcotics Enforcement.

As a result, Internal Affairs Bureau (IAB) investigators met with and interviewed a Dr. Person A claimed that he was being forced by certain individuals to write prescriptions for testosterone. He claimed that the situation had degenerated to the point that he was being forced to write ever increasing prescriptions to people that he was not involved with treating and/or seeing. Person A was later charged criminally and pled guilty to accepting kickbacks from Lowen's Pharmacy.

Following the interview with Person A, on October 15 and 16, 2007, a search warrant was executed at Lowen's Pharmacy and their records were reviewed. During that review it was discovered that one prescription had been issued in Respondent's name. Respondent denied ever using Lowen's Pharmacy and denied ever picking up the prescription. The Department does not challenge Respondent's assertion and, indeed, it would appear that Respondent has consistently had his prescriptions filled at the A&P Pharmacy in Bayonne, New Jersey. Respondent was called in for an official Department interview on January 15, 2008, (DX 5A & 5B, tape and transcript) and voluntarily

¹⁴ The history of this investigation is not in dispute. It was testified to in greater detail in Disciplinary Case No. 83969/08 and information from that case, regarding the investigation, is noted herein.

provided a printout of all of his prescriptions from the A&P Pharmacy covering a period from February 7, 2001 to January 11, 2008 (DX 4).¹⁵

The Department's case essentially rests on the expert testimony of Dr. Green. His conclusions are based on his review of the prescription list and Respondent's statements at the official Department interview.

The single specification in this case charges that Respondent "did possess and/or use anabolic steroids and/or human growth hormones (HGH) for purposes outside the normal course of standard medical care."

Green is certainly a well-recognized in the field and this Court would not challenge his conclusion. The question for this Court is whether his conclusion is sufficient under the law as it applies to this case. Put another way, an expert may draw a conclusion but this Court is not bound to accept that conclusion, indeed, should not accept that conclusion, unless it meets the requirements of law. This Court must, therefore, analyze whether Green's conclusion is based on substantial evidence and if it meets the burden of proof necessary for a finding in this case.

To arrive at his conclusions that Respondent's care was outside the normal course of standard medical practice, Green cited essentially two things; his incredulity about what Respondent said about his reason for seeking treatment and his review of the prescription list.

It is clear that the Department believes that Respondent's claim to have had a groin injury was used by Respondent as something of a pretext for his going to Dr. Person D in the first place back in 1999. Green testified authoritatively that a groin

¹⁵ A second list was submitted by Respondent at this trial covering the period from April 8, 2003, to August 15, 2006, which purports to contain some additional entries missing from the original list for that period of time (RX A).

injury would, if it were serious, require immediate attention because of the pain and, further, that such an injury was unlikely to have been the cause of Respondent's claimed loss of libido.

Looking at Respondent's testimony at this trial and reviewing his statement at the official Department interview, it appears that that is not what Respondent was saying. What he said was that he was very concerned about an inability to obtain or maintain an erection, as well as his loss of sexual desire. He believed it might have been the result of a groin injury. He claims that is what the doctor, Person D, told him. We do not know what Person D's medical assessment was at that time because we do not have the medical records.¹⁶ As Respondent noted at the official Department interview, he did not recall all that was said in the conversation because it had occurred eight years prior to that interview. It is possible that the doctor told him, incorrectly, that the groin injury was the source of his sexual dysfunction, a statement, if it was made, that Respondent would have been in no position to challenge medically back in 1999 or whenever the first visit occurred.

The conclusion that the treatment Respondent received was inappropriate was also based in part on Green's review of the pharmacy list. His observation was that Respondent was prescribed certain female hormones and acne medication. His expert testimony was that this was used to offset excessive amounts of testosterone.

There is no question that over the course of the seven-year period for which we have records, Respondent was prescribed these drugs on several occasions. It is not clear

¹⁶

Respondent signed releases for all his medical records. The records from his first doctor, Person D, were transferred to the second doctor, Person B. Those records were all lost or destroyed when Person B died.

from the testimony that this would represent a continuing pattern of improper treatment but something that might have been episodic.

Green's conclusion that Respondent received excessive testosterone is based not on a reading of medical records or readings of testosterone levels but based on an inference from the fact that female hormones were prescribed. This certainly could establish a level of suspicion but it is not at all clear that it establishes a level of proof sufficient for this tribunal.

In this case, we do have one testosterone reading. At the time of his official Department interview, the Department was in possession of a testosterone test taken by Respondent on October 31, 2007. Then-Captain Carione, who conducted the interview, noted that on that test Respondent's testosterone reading was 890. He noted that was within normal range but closer to the upper limit of normal, which he said was 1000. With regard to free testosterone, the reading was, according to Carione, 30 points above normal.¹⁷ While the results are somewhat ambiguous, the fact is that the reading cannot be said to clearly be the result of abuse and, indeed, Green never mentioned it as supporting his conclusion.

Certainly, these readings do not reach the levels found in Disciplinary Case No. 83969/08,¹⁸ where several readings well exceeded the maximum with one reading being approximately double the maximum and another being five times the maximum.¹⁹

¹⁷ This comes out to about 15% above normal.

¹⁸ This is the only other case that this Court is aware of that went to trial on the issue of testosterone and HGH use where these substances were issued by a prescription. The member of the service in that case, a senior member of the uniformed force, was found guilty.

¹⁹ 200% and 500% above normal respectively.

Additionally, Green was able to point to nothing in the prescription list that would directly indicate improper and excessive doses of testosterone being utilized. All of his conclusions are based on inference.

Because it was not in the pharmaceutical records, to establish that excessive testosterone was being taken, the Department endeavored to establish that Respondent had more than one source of testosterone at the same time. The testimony regarding this is rather confusing. The Department seems to argue that Respondent was receiving the 1% gel and injections at the same time. Respondent denied this. The fact is that the treatment in question went on for a period of almost a decade and different things happened at different times. For instance, there appear to be long periods when the AndroGel (1% steroid solution) was not prescribed. There is surmise by the Department that there were multiple simultaneous infusions of testosterone but there is no direct proof of it.²⁰ Moreover, Green, the expert witness on whose testimony all of this surmise is based, conceded that he did not have any facts to establish that Respondent was taking anabolic steroids beyond those on the prescription lists. Of course, we know from Respondent's testimony that he was receiving testosterone injections from some of his doctors. We do not when or where or how much was administered.

There are similar issues with regard to the evidence about HGH. Green testified that HGH cannot be used off-label and that the legitimate uses are rare. Other than stating the HGH is used by doctors who abuse steroids, he mentioned no direct evidence

²⁰ An example of this type of thinking can be found in the issue of syringes. During the official Department interview, Carione stated that the fact that the prescription list showed syringes without medication was evidence that Respondent was purchasing steroids illegally. Green testified that the syringes without injectable drugs constituted a red flag. During the trial, Respondent produced an amended prescription list from the A&P Pharmacy which showed that Novarel was prescribed along with them. While Green questioned the use of Novarel, an hCG, he appeared to be satisfied that it explained the syringes.

that Respondent did not have the conditions for which HGH can be used or that the doctors who prescribed it failed to conduct the proper tests.

In contrast, in Disciplinary Case No. 83969/08, Green was able to review medical records to determine that no proper testing had been done to establish that HGH was needed. To be sure, it does seem that there was no proper medical basis for prescribing HGH to Respondent, but there appears to be no direct evidence of it. In this case, there were no medical records and, consequently, the basis for Green's conclusion could only have been inferential.

Green was obviously conscious of this problem. When asked if Respondent's treatment was within the normal course of standard medical care, Green did not give a clear and unconditional response. Instead, he immediately noted that, "we have some limitations here since we don't have the full medical records prior to 2008." He further hedged his testimony when he said there "*appeared*" to be no legitimate medical conditions that were being treated.²¹

Of course, it is frustrating that the medical records of treatment done by Person D and Person B are missing but there is no indication that Respondent had anything to do with that and, indeed, he claims to have made significant effort to obtain them. He claims he signed releases for those records and there is no evidence that he declined to sign any release for anything.

²¹ Once again this is different from Disciplinary Case No. 83969/08, where Green made unequivocal conclusions.

While Person B is deceased and obviously cannot be interviewed, Person D and Person C, who treated Respondent before and after Person B, might have been available.²² They were not interviewed and there was no evidence that any effort had been made to interview them. Nor is there any evidence to indicate that any effort was made to obtain the medical records of treatment by Person C, who saw Respondent after Person B's death and up to the time of the official Department interview. There is no reason to believe records of the treatment he provided were in any way unavailable.

All in all, while there is reason to believe that Respondent received inappropriate treatment involving anabolic steroids and HGH, there is a lack of direct, sufficient and substantial evidence of it.

A second element of critical importance to this specification is the ability of Respondent to have recognized that the treatment he was receiving was outside the normal course of standard medical care. Respondent testified that he began this course of treatment in 1999 or 2000. He produced pharmaceutical records going back to 2001. It is difficult to imagine that the level of attentiveness to the steroid issue was the same more than a decade ago than it is now. Respondent has argued that the Department itself did not have any formal policy on testosterone until 2006.²³

The doctors he saw may have been charlatans who were engaged in shady medical practice but there is no evidence to support that, or more significantly, that Respondent was aware of that. Respondent claimed that when he told his father about his

²² Streffacio testified that he never interviewed either of these individuals and apparently never attempted to. It should be noted that it has come to this Court's attention, outside of the record, that Person D died in 2006.

²³ Personnel Bureau Memo No. 95, entitled *Anabolic Steroids and Human Growth Hormone*, was issued December 21, 2009. It replaced Personnel Bureau Memo 23, issued March 26, 2008. This Court was unable to find any earlier memorandum regarding steroids.

sexual problems, his father researched the issue and recommended Person D.²⁴

Respondent gave uncontested testimony that the first time he saw Person B, it was in an office he had in Bayonne Hospital. Seeing a doctor in a hospital certainly would support the conclusion that he was a legitimate medical practitioner.

By contrast, Person A, the doctor in Disciplinary Case No. 83969/08, practiced at facility with a sign announcing that it was the Fountain of Youth Center and a further sign indicating that he operated the Life Longevity Center. He told the member of service in that case that he could not get his prescription filled at a regular pharmacy and that he had to go to a compounding pharmacy where the drugs could be made. There are very few compounding pharmacies and the member of service in that case went to Lowen's Pharmacy. Person A prescribed a 10%, solution which was ten times the legal limit at that time. No insurance paid for any part of the doctor fees or the medication and the full amount was paid by the member of the service in that case.

In this case, Respondent went to a regular pharmacy, at the A&P Food Store. Everything except for one type of drug was covered by insurance. The testosterone Respondent received was a regular pharmaceutical item, a 1% solution, which, again, was covered by insurance.²⁵

Further, not only did each of these doctors take blood tests but they also, according to Respondent, took extensive histories and conducted other medical tests before prescribing testosterone. Person B, Respondent testified, took him off all medication

²⁴

Streffacio testified that Respondent waffled on this during the official Department interview, first saying his father found Person D and then that his father-in-law found Person D. This appears to be incorrect and Respondent consistently said that it was his father.

²⁵

Respondent was not asked at the official Department interview or at this trial if he received insurance coverage for medical treatment provided by Person D, Person B or Person C. Consequently there is no evidence that these treatments were not covered.

for a period of time to see if his body would produce adequate testosterone on its own. When that did not work, according to Respondent, Person B tried to see if hCG would cause his body to start producing testosterone on its own. Only when that failed did he resume testosterone treatment.

This, again, is contrasted with Disciplinary Case No. 83969/08, where Person A began prescribing the 10% testosterone solution after only a blood test. Taking blood had been the only activity on that officer's intake visit and Person A did not even see the patient during that visit. The red flags in that case were multiple and obvious. In this case, there was no evidence that any red flags clearly existed.

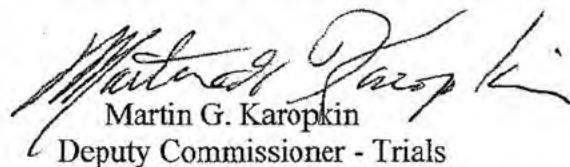
The Department has cited some things that might have caused Respondent concern; the fact that he had to inject some of the drugs himself and the fact that the HGH was not covered by insurance should, the Department claims, have gotten his attention that something was wrong with this treatment. But even on this issue, these supposed red flags were not as clear as the Department suggests. Respondent, after all, was filling his prescriptions for HGH and obtaining syringes at a pharmacy at the A&P. It is hard to imagine anything more mundane. Further, it is difficult to imagine the A&P as a source of illicit drugs, something that might be taken into account when determining Respondent's level of knowledge.

What is perhaps most telling about this case is that Respondent is currently receiving testosterone treatment with Green's full approval and, apparently, the full approval of the Department. In fact, Respondent went to his current physician, an endocrinologist, directly after his official Department interview over four years ago at Carione's direction.

Green surmised that Respondent needs testosterone replacement treatment because of years of steroid abuse. That is certainly possible but, even in this area, Green hedged his answer by stating that this conclusion was "absent any evidence to the contrary." This brings us back to the problem that there is a lack of direct medical evidence. While the conclusion may be correct, it is not founded on a basis of substantial or sufficient evidence. By hedging on this answer, Green leaves the possibility that Respondent did have a natural testosterone deficiency at the outset.

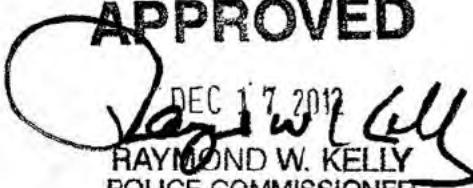
In sum, while there is some basis for Green's conclusion that Respondent received inappropriate treatment involving the use of anabolic steroids and HGH, it has not been established with sufficient and substantial evidence. Further, there is a lack of evidence to establish that Respondent knew or should have known that the treatment he was receiving was inappropriate. As a result, Respondent is found Not Guilty of the single specification in this case.

Respectfully submitted,



Martin G. Karopkin
Deputy Commissioner - Trials

APPROVED



DEC 17 2012
RAYMOND W. KELLY
POLICE COMMISSIONER